

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KABANA, INC., a
New Mexico corporation,
616 Indian School Rd NW
Albuquerque, New Mexico 87102

Plaintiff,

V.

Cause No.: 1:15-cv-00995

KING LARIMAR, INC., a
New York corporation,
15 West 47th Street, Suite 302
New York, New York 10036

Serve: Jai M. Sadhwani
15 West 47th Street, Suite 302
New York, New York 10036

and

APOLLO MANUFACTURING INC., a
New York corporation,
15 West 47th Street, Suite 302
New York, New York 10036

Serve: Jai M. Sadhwani
15 West 47th Street
New York, New York 10036

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, by its attorneys, Peacock Myers, P.C., for its Complaint against Defendants,

alleges as follows:

JURISDICTION AND VENUE

1. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§101 et seq. (the "Copyright Act"). This Court has jurisdiction pursuant to 28 U.S.C. § 1338(a).

2. Defendants have engaged in acts of copyright infringement within this judicial district.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(a).

THE PARTIES

4. Plaintiff, Kabana, Inc. ("Kabana") is a corporation organized and existing under the laws of the State of New Mexico. Kabana's principal place of business is 616 Indian School Road, Albuquerque, New Mexico 87102.

5. Defendant King Larimar, Inc. ("King Larimar"), is a corporation organized and existing under the laws of the State of New York. Defendant King Larimar sells jewelry in the state of New Mexico.

6. Defendant Apollo Manufacturing, Inc. ("Apollo"), is a corporation organized and existing under the laws of the State of New York. Defendant Apollo sells jewelry in the state of New Mexico and/or supplies Defendant King Larimar with jewelry sold in the state of New Mexico.

7. Defendants' principal place of business is at 15 West 47th Street, Suite 302, New York, New York 10036-3442. Defendants, which also do business under the name "King Larimar" have directed the infringing activities set forth below.

8. Kabana, at all times relevant to the matters discussed in this Complaint, has been engaged in the design of jewelry products including the products identified by the following

Kabana design numbers:

- 1) GPCF 314
- 2) GPCF 358
- 3) GRCF 506
- 4) GRIF 714
- 5) GRIF 611
- 6) GECF 996
- 7) GPCF 359
- 8) GRIF 511
- 9) GPCF 983
- 10) GPCF326
- 11) GPCF796
- 12) GRIF360
- 13) GRIF364
- 14) GRIF326
- 15) GPCF128

Kabana created these new and original designs for pendants and rings (“Works”) made of precious metals, precious stones, and inlay.

9. Kabana applied to the Register of Copyrights for a certificate of registration for the Works and the Registrar has issued certificates of registration for the Works, as follows:

1) Attached hereto as Exhibit 1-A is Kabana Copyright Registration Number VA 1-928-799, which is based on Kabana Design No. GPCF 314. Attached hereto as Exhibit 1-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GPCF 314.

2) Attached hereto as Exhibit 2-A is Kabana Copyright Registration Number 1-928-794, which is based on Kabana Design No. GPCF 358. Attached hereto as Exhibit 2-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GPCF 358.

3) Attached hereto as Exhibit 3-A is Kabana Copyright Registration Number VA0000998509, which is based on Kabana Design No. GRCF 506. Attached hereto as Exhibit 3-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRCF 506.

4) Attached hereto as Exhibit 4-A is Kabana Copyright Registration Number VA 998-508, which is based on Kabana Design No. GRCF714. Attached hereto as Exhibit 4-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRCF714.

5) Attached hereto as Exhibit 5-A is Kabana Copyright Registration Number VA 1-928-798, which is based on Kabana Design No. GRIF 611. Attached hereto as Exhibit 5-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRIF 611.

6) Attached hereto as Exhibit 6-A is Kabana Copyright Registration Number VA 1-928-797, which is based on Kabana Design No. GECF 996. Attached hereto as Exhibit 6-

B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GECF 996.

7) Attached hereto as Exhibit 7-A is Kabana Copyright Registration Number VA 1-896-035, which is based on Kabana Design No. GPCF 359. Attached hereto as Exhibit 7-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GPCF 359.

8) Attached hereto as Exhibit 8-A is Kabana Copyright Registration Number VA 1-896-031, which is based on Kabana Design No. GRIF 511. Attached hereto as Exhibit 8-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRIF 511.

9) Attached hereto as Exhibit 9-A is Kabana Copyright Registration Number VA 1-315-068, which is based on Kabana Design No. GPCF983. Attached hereto as Exhibit 9-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GPCF983.

10) Attached hereto as Exhibit 10-A is Kabana Copyright Registration Application filed August 27, 2015, which is based on Kabana Design No. GPCF326. Attached hereto as Exhibit 10-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GPCF326.

11) Attached hereto as Exhibit 11-A is Kabana Copyright Registration Application filed August 27, 2015, which is based on Kabana Design No. GPCF796. Attached hereto as Exhibit 11-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GPCF796.

12) Attached hereto as Exhibit 12-A is Kabana Copyright Registration Number VA 1-332-005, which is based on Kabana Design No. GRIF360. Attached hereto as Exhibit 12-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRIF 360.

13) Attached hereto as Exhibit 13-A is Kabana Copyright Registration Number VA 1-333-093, which is based on Kabana Design No. GRIF364. Attached hereto as Exhibit 13-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRIF364.

14) Attached hereto as Exhibit 14-A is Kabana Copyright Registration Number VA 1-331-997, which is based on Kabana Design No. GRIF326. Attached hereto as Exhibit 14-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRIF326.

15) Attached hereto as Exhibit 15-A is Kabana Copyright Registration Number VA 1-331-981, which is based on Kabana Design No. GRIF128. Attached hereto as Exhibit 15-B is a color copy of the Deposit submitted to the U.S. Copyright Office for Kabana Design No. GRIF128.

10. Kabana was and still is the owner of the copyrights to the Works.

11. Defendants had access to Kabana's Work through the advertising, catalogs and wide distribution of Kabana's jewelry line in retail stores, trade shows, cruise lines, and associated advertising.

12. Upon information and belief, Defendants have manufactured, has offered to sell, and has sold to individuals and/or companies a substantial number of knock-off or infringing

copies or derivatives of Kabana's Work ("Copies") without permission from Kabana to do so, including through the Internet website <http://www.kinglarimar.com>, which is now not operating. A screen image of the website as previously operating is attached as Exhibit 17.

13. Such acts of copyright infringement were knowing and willful.

14. The Copies are of inferior quality to Kabana's original Works and are sold at a lesser price. The copies damage the market for the original Works as well as Kabana's reputation.

15. The specific acts of copyright infringement alleged, as well as Defendants' entire course of conduct, have caused and are causing Kabana incalculable damage. By continuing to sell Copies, Defendants will continue committing copyright infringement and harming Kabana's market and reputation. Unless this Court restrains Defendants from committing further acts of copyright infringement, Kabana will suffer irreparable injury for which it has no adequate remedy at law. Kabana is entitled to an injunction restraining Defendants from further infringement as provided in 15 U.S.C. § 502.

16. Kabana is further entitled to recover from Defendants the actual damages it has sustained and the profits Defendants derived from sale of the unauthorized Copies or, in the alternative, statutory damages, as well as Kabana's costs and attorney's fees, all as provided in 15 U.S.C. §§ 504 and 505.

WHEREFORE, Kabana prays for relief as follows:

A. That Defendants, their agents, servants, employees, and all persons acting under Defendants' permission and authority, be preliminary and permanently enjoined and restrained from infringing, in any manner, any copyrighted Work owned by Kabana, pursuant to 17 U.S.C. § 502;

B. That Defendants and all persons acting in concert therewith be ordered to immediately stop the sale, advertisement, and distribution of the Copies;

C. That Defendants be directed to file with this Court and serve on Plaintiff, within ten (10) days after the service of an injunction, a report in writing and under oath, setting forth in detail the manner and form in which defendant has complied with the injunction.

D. That Defendants be ordered to provide any and all of the Copies to Plaintiff for destruction; provide an accounting of all sales of the Copies by Defendants to date; identify all persons who made/imported the Copies, to include providing all residential and commercial addresses and telephone numbers of any such persons;

E. That Defendants be ordered to provide to Plaintiff an accounting of Defendants' profits from sale of the Copies, prepared by a Certified Public Accountant;

F. That Defendants be ordered to pay damages for copyright infringement:

i.) equivalent to those sustained by Kabana and/or the profits of

Defendant from sale of the infringing Copies pursuant to 17 U.S.C. § 504(b); or if greater

ii.) statutory damages of \$150,000 for each work infringed, pursuant to 17 U.S.C.

Section 504(c)(2);

G. That Defendants be ordered to pay costs, including a reasonable attorneys fees, pursuant to 17 U.S.C. § 505; and

H. That Kabana have such other and further relief as is just and equitable.

Dated this 4th day of November, 2015.

PEACOCK MYERS, P.C.

By: /s/ Deborah A. Peacock

/s/ Jeffrey D. Myers

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